

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

3 AMANDA FEENSTRA, et al.,
4 Plaintiff,

5 VS. Case Number
19-cv-234-JFH-FHM
6 JARED SIGLER, et al.,
7 Defendants.

8 WEB CONFERENCE DEPOSITION OF WARREN CRAIG SUTTER
9 TAKEN ON BEHALF OF THE PLAINTIFF
10 ON NOVEMBER 11, 2020, BEGINNING AT 9:03 A.M.
11 IN EDMOND, OKLAHOMA
(LOCATION OF REPORTER)

12 APPEARANCES:

13 On behalf of the Plaintiffs:

14 MS. ALYSHA NAIK (via Zoom)
15 MR. MICHAEL LACOVARA (via Zoom)
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18 On behalf of the OIDS Defendants:

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22

23
24 (Appearances continued on page 2)

25 Reported by: Cheryl D. Rylant, CSR, RPR

<div> <div>Page 26</div> <div> <p>1 representation would include a discussion about the</p> <p>2 relevant facts and conduct at issue; correct?</p> <p>3 A. Yes.</p> <p>4 Q. A discussion about potential custodial</p> <p>5 sentences or probation; correct?</p> <p>6 A. Yes.</p> <p>7 Q. A discussion about the risk of going to trial</p> <p>8 versus accepting a plea; correct?</p> <p>9 A. Yes.</p> <p>10 Q. Including any discussion that a plea could</p> <p>11 forfeit rights to an appeal; correct?</p> <p>12 A. Yes.</p> <p>13 Q. A discussion about the potential fines that</p> <p>14 could be imposed by entering the plea agreement;</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. A discussion about court fees and costs that</p> <p>18 could be imposed; correct?</p> <p>19 A. Yes.</p> <p>20 Q. A discussion about the ability to pay those</p> <p>21 fines, fees, and costs?</p> <p>22 A. Yes.</p> <p>23 Q. And, as you mentioned earlier, you'd agree</p> <p>24 that the contract attorney's representation would</p> <p>25 include being present at sentencing; correct?</p> </div> <div>Page 27</div> </div>	<div> <div>Page 28</div> <div> <p>1 THE REPORTER: Number 2?</p> <p>2 MS. NAIK: I think this is the third</p> <p>3 document that I've used.</p> <p>4 THE REPORTER: Oh, okay. The --</p> <p>5 MR. WILLIFORD: Alysha, I don't -- Alysha,</p> <p>6 I don't know. Maybe we can go back and somebody else</p> <p>7 may be able to correct me -- I don't think you marked</p> <p>8 the contract as an exhibit. If you want to go back</p> <p>9 and make that 2, then we can make this 3. Or however</p> <p>10 you want to do that. I don't remember you actually</p> <p>11 marking that one. So...</p> <p>12 MS. NAIK: Okay. That's good. Yeah, that</p> <p>13 sounds good to me. Thanks, Jon.</p> <p>14 Cheryl, if we could mark the sample contract</p> <p>15 as Exhibit 2, and then mark Rule 8 here as Exhibit 3.</p> <p>16 (Whereupon, Deposition Exhibit Nos. 2 and 3</p> <p>17 were marked for identification and made part of the</p> <p>18 record.)</p> <p>19 BY MS. NAIK:</p> <p>20 Q. Mr. Sutter, do you see the text of Rule 8.1</p> <p>21 at the top there?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Now, it says there:</p> <p>24 "When the judgment and sentence of a</p> <p>25 court, either in whole or in part, imposes a</p> </div> <div>Page 29</div> </div>
<div> <div>Page 27</div> <div> <p>1 A. Yes.</p> <p>2 Q. And when a judgment is entered?</p> <p>3 A. That is correct.</p> <p>4 Q. Do you expect OIDS counsel to be present when</p> <p>5 a judge makes the required finding under Rule 8.1?</p> <p>6 A. Since that often occurs after sentencing, no.</p> <p>7 We maintain and have maintained, certainly since I've</p> <p>8 been here, that that -- well, that the case, at that</p> <p>9 juncture, is resolved. Judgment and sentence has</p> <p>10 been entered. The individual is no longer facing</p> <p>11 charges. The criminal case has been resolved. And</p> <p>12 at that point, it's a collection action that's civil</p> <p>13 or quasi civil in nature, and we don't have the</p> <p>14 resources to appear at those hearings.</p> <p>15 Q. I'd like to turn to the text of Rule 8.1. Do</p> <p>16 you have that in front of you?</p> <p>17 A. Hang on a second. Yes, I do.</p> <p>18 Q. If we could turn -- do you see here, this</p> <p>19 document, it's Section 8, "Procedures Relating to</p> <p>20 District and Municipal Courts, Relating to</p> <p>21 Imprisonment of Nonpayment of Fines and Costs."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 MS. NAIK: Cheryl, if we could please mark</p> <p>25 this as the next exhibit.</p> </div> <div>Page 27</div> </div>	<div> <div>Page 29</div> <div> <p>1 fine and/or costs upon a defendant, a</p> <p>2 judicial hearing shall be conducted and</p> <p>3 judicial determination made as to the</p> <p>4 defendant's ability to immediately satisfy</p> <p>5 the fines and costs."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. You'd agree that in using the words "a</p> <p>9 judicial hearing shall be conducted and judicial</p> <p>10 determination made," that such a judicial</p> <p>11 determination is mandatory; correct?</p> <p>12 A. According to the rule, that is correct.</p> <p>13 Q. And, as we discussed earlier, you would</p> <p>14 expect a contract attorney's representation to</p> <p>15 include a discussion about potential fines, fees, and</p> <p>16 costs; correct?</p> <p>17 A. Yes. Yes.</p> <p>18 Q. So, in a contract attorney's representation,</p> <p>19 then, when an indigent defendant is entering a plea,</p> <p>20 would ensure that either the judge makes this</p> <p>21 mandatory judicial determination under Rule 8.1 or</p> <p>22 that a client has knowingly waived his rights;</p> <p>23 correct?</p> <p>24 A. Not entirely correct.</p> <p>25 MR. WILLIFORD: Hold on, hold on, hold on.</p> </div> <div>Page 29</div> </div>